

Case Management Roundtable

April 7, 2004

The Round Table began with opening remarks by Chair Steve Gaw who emphasized the need to also look at Rulemaking Issues in the context of improving case efficiency.

- Purpose is to see what we can do to make things better than they presently are
- Emphasis is also to involve the parties to examine improvements and to encourage a dialogue with the Commission.
- Participants were encouraged to be vocal, but also constructive.

Bob Schallenberg indicated the need to set up work groups from this meeting to address items identified at this meeting.

Dale Johansen - Prior Generic Timelines for Large Company Rate Cases

- Three-Page timeline of activities for large company rate cases was reviewed.
- The timeline was created by a Staff working group named Rate Case Team. This timeline has been modified in the past years in conjunction with major rate cases before the Commission. This shows how a major case should proceed. Set timeline; worked with parties to identify more formal procedural schedule for case.
- This shows time between each activity.
- This document was used for the recent MO American Water Case and the AmerenUE Rate Cases.
- Also lays the groundwork for the idea of developing timelines for other types of cases.
- Requests for Necessity – use this as a guide
- Certificate Cases Recommendation filed within 60 days of the filing unless there are interveners. Have not yet fully developed timelines for those types of cases where there are interveners.
- This timeline includes standard procedural schedule
- Once the case is filed, determine operation of law date and work backwards from that date to see when things need to happen

- Determine how much time for that particular case the Commission will need to deliberate the case
- Standard approach for draft schedule is six weeks for deliberation/order writing
- Key component in determining how complicated the case will be is how many interveners there are
- How much hearing time will be needed
- Most cases need no more than two weeks; usually about one week needed
- This is the process Staff uses to process major rate cases
- Staff filing of generic timeline step is no longer used – all other parts followed by Staff

Wess Henderson – Selection of Case Types to be Evaluated

- How can we make this process better?
- Where does the Commission provide notice to general public, municipalities and other parties when cases are filed? RLJ will issue notice to go out. This is usually done in the suspension order which instructs the Data Center to notify public parties
- Intervention deadline – three weeks after suspension of tariffs; pretty short timeline given the notice just went out three weeks earlier. Late filed interventions prior to pre-hearing are generally allowed; however, intervention timeline is short.
- Notice to governmental entities is very difficult. Trying to obtain current listing of these entities. We receive a lot of returned mail. We are attempting to get notice out.
- Direction from Judges from Commission attempt to get this out within days of notice. Allow standard 30-day intervention period.
- Not aware of anyone being denied intervention after the deadline. Judge tries to accommodate that.
- When Staff puts together a schedule, try to shorten the length of time it takes to process a major rate case.
- Where does the time come from?
- Maybe use timeframes used in complaint cases?
- Would it be helpful to encourage uniformity by companies using Staff's EMS Run? This would simplify the process.
- Technical conferences would be helpful. Halfway through audit process, hold a technical conference to iron out disputes. Hash out any misunderstandings.

- PSC uses standard DRs submitted. Sit down and talk about those so that everyone knows up front what they are dealing with.
- Return on equity; depreciation. Come up with Commission policy on those things. Generic evidentiary proceeding to get these resolved.
- Would be tough to narrow it down to those specifics.
- Need to focus on where is it that we can shorten the time? If that is a goal, need consensus. Don't want to shorten timeline if it limits the parties' time in preparing their cases.
- Try to keep separation between Staff and Commissioners. Live testimony Commission idea.
- Different policies for each case. Things not being done consistently.
- Concept of filing multiple rounds of testimony, many times direct testimony is not relevant. Not helpful to the Commissioners.
- Suggestions from the Commissioners to do it all live – no pre-filed testimony. Maybe not the answer in all cases.
- Need to trim the number of rounds of pre-filed testimony. May be a part of the discovery process. May be another way to go about it. Should it be moved into the discovery element of the case?
- How much time is the Commission taking to process a case?
- What do we need to get a better handle on cases and move them through the system? We don't like to see these cases age. Some cases lingering around that need to be dealt with.
- Briefing schedule same as testimony. Briefs do not need to be so voluminous and don't need three rounds. May just need to do closing arguments – do away with briefs.
- Number of pieces of testimony in rate case. Too many filings. Company with burden of proof should open and close the case. Should be the same in a rate case as in a complaint case. More efficient. Issues on the table faster.
- Some things that work in Illinois – telephone hearings sometimes for large hearings. Pre-hearing conferences could be done through conference calls. Make the attorneys estimate cross-examination for each witness. Not held to that in hearing, but makes you think about how long you will take and be organized.
- Some companies feel they are drowning in data requests. Even small companies may receive as many as 300 DRs. Almost crippling when multiple cases are going on. Need to find a solution. Maybe a limit to number of data requests. AmerenUE complaint case resulted in thousands of DRs to the Company.

- Staff still needs some of that information. May be able to work out some generic requests and Company responses would be shared automatically with all parties to eliminate duplication. An example of a standard DR is labor contracts. Some information may be provided by the company up front without us having to ask for it.
- Telephone hearings – history for pre-hearings is that if we don't make the parties get in the same room physically, they won't. If they phone in, things may not get done. Judges have begun asking how many witnesses; how many days, etc.
- Judges frequently wonder why no one does depositions.
- Parties sometimes must be placed in a position where they have to negotiate in a prehearing conference.
- Processes here in Missouri very good relative to other states. The way the Staff processes cases is very good.
- Rate of return: Some states (Texas) has a rule that if you want ROE of X, you can come and get that without a witness. Florida sets generic rate of return, eliminates rate of return as an issue. If you could eliminate rate of return in testimony

Rulemaking

- Process should be standardized before order is released allowing for roundtables/workshops to allow stakeholders to discuss rules before they are passed to the Commissioners. Net Metering process was a good process including workshops. Cold weather rule process also good. If you do not allow stakeholders for input before the rule is put in place, may be errors in the rule.
- There is a comment period for each rule.
- Use list serve to notify industry/public of issue paper on proposed rulemaking.
- Suggestion to place the information on the Internet. Would need Commission approval.
- Public Counsel – Industry that almost every time that begins this procedure and defines the issues. The Company wants this information on the record. Overloaded with information. Quality of the testimony is what we need to look at; not quantity. Need to be to the point.
- Early pre-hearing conferences – waste of time. Could get on the telephone with attorneys to set up a procedural schedule. Issues do not get determined at the pre-hearing conference.

- Discovery – putting limits on data requests – when you receive responses that are not responses to the data requests. Each round of testimony triggers additional data requests.
- One thing that triggers data requests would be things in direct testimony. If response comes back and is not clear, another data request will be generated.
- Depositions are very expensive. Commission could consider by rule sworn testimony using tape recorder and then would be transcribed.
- Have the utilities send copies of filings to all parties that they had in prior cases automatically.
- Deal with applications to intervene – until filed and sustained, you are not a part, you cannot send data requests. Set up a rule that says timeline unopposed interventions are granted.
- Shorten the turnaround on data requests. Iowa has a seven day turn around.
- Circulate your data requests (out the Web). Many are redundant.
- Honing process of the iterative filings – Parties do not lock themselves into positions until they have to. We have a rule Brian Gardners (sp?) book on how to write persuasive briefs. Deep issue. Need to put it in 75 words or less.
- Informal roundtable process for rulemaking process. Two associations in the State that would help facilitate this.
- Summary of Cases to Candidates for Further Study
- Prescheduled Adjudication roundtable coming Friday, April 30th

Rate Cases Formal and Informal

- Have run into problems filing informally – would like to see timeframes set like the formal cases
- Used to have a final meeting to address last few issues Staff/Company could not agree upon. Would be nice to have that in the rules.
- Data requests are a problem for small companies. They do not have the resources to answer the requests nor the money to hire consultants. Some requests have multiple parts. Very time consuming.
- Small rate case less expensive than formal cases.
- The Company would like to see a rule where they could have a use of a consultant to put together their cases. Should be able to recover the expense of the consultant.
- In a small company rate case, the Staff is very active in preparation of the case. Staff will go in and set up EMS run, etc. Do try to keep 150

day timeline in place. Staff performs entire audit for these small companies.

- Try to put timelines on certain types of cases without operation of law dates
- Constant discussion about how little Judges get out of the pre-filed testimony.
- They read backwards towards direct testimony to discern the critical issues more quickly.
- Rather than issuing voluminous order/notice, can a docket entry simply be made with notification to interested parties in certain matters of a case?
- Commissioners have asked can we do a Law Day where motions are ruled on? Does have problems, but not out of the question.
- Lots of posturing before settlement. Reiterating much information in rate cases before settlement reached.
- Look at generic issues; data requests, orders, etc.
- No reason to file direct testimony in the beginning of the case. If case is not settled, then enter direct testimony. File everything to support the revenue requirement up front instead of filing testimony.
- Prepared testimony is supposed to substitute for depositions
- Should encourage the filing of testimony rather than discourage the filing of it.
- Make more specific requirements up front. File the key parts as exhibits or data first.
- May lengthen the process by pre-filing information than shorten it.
- Recently, the process has been pushed up against the operation of law date so that the parties have no meaningful opportunity to sit down and try to have a meaningful negotiation meeting.
- Pre-hearing conference should develop into a settlement conference; however, parties are not typically ready.
- There is value in setting guidelines for processes. Doesn't have to be enforceable. Have to have some goals.
- The parties need meaningful opportunities to negotiate.

Testimony

- When should it be filed?
- What should it contain?
- Do we need a working group to answer these questions?

- Staff needs this information early in the case; however, the Commissioners may not.
- Staff's testimony helps other parties in the case.

Data Requests

- It was mentioned that EFIS has a DR function. Utilized in the recent Aquila case.

Limits on Briefing

- Closing arguments in one brief – directive from Commissioners.
- Parties are arguing with one another.
- Arguments should be clear.
- Should be addressing and persuading the Commission.
- Helps Commission make better decisions.
- Difficult to write short brief.
- In the past, brief limit at 30 pages; also, a limit on the number of minutes you may spend in arguments.
- Telephone Conference – which types of meetings would this apply to? Status conferences may also be useful.
- In the past, every case was tried. Most cases now are being settled. Missouri has Commissioners sitting in on hearings; not all states operate in that manner.
- Must come up with timeline for cases.
- The goal for companies is to get the rate increase as quickly as possible.
- The process needs to be less judicial and more legislative.
- PSC Judges have a role to protect the record and the process.
- Staff has developed procedures in informal rate cases.
- Second prehearing conference used to determine outstanding issues in case before filing of additional testimony.
- Staff also has other obligations besides rate cases; i.e., FCC cases, etc. which have their own timelines.
- Staff is not a party in all cases in some other cases at some other State Commissions.
- The Commission may be interested in exploring this in Missouri to access Staff in a manner it hasn't accessed before.
- **Definitions** – Formal rate case – Assigned case number

Informal rate case – Company sends letter (Would this be limited to small rate cases?) Working group to determine..

- Minimum Filing Requirements are generic and developed to minimize the need for data requests.

Working Groups

Staff will assume the administrative role in organizing the meetings for the working groups. This would include notifying the Commissioners of dates, locations, and times of meetings.

Formal Rate Case Process – Denny Williams; Tim Rush; Ameren; Office of Public Counsel; Missouri American Water; Laclede; Stu Conrad; Trip England; Tim Schwarz; Rosella Schad; Dale Johansen; Lewis Mills; James Watkins; SBC; Tom Imhoff; Lena Mantle; Cary Featherstone; St. Louis Office; Industrial Interveners; Diane Vuylsteke; Lisa Langeneckert/Bob Johnson

Informal Rate Case Process – Office of Public Counsel; Dale Johansen; Kathy Pape; Raytown Water; Stu Conrad/Finnegan; Trip England; Rick Helms; Keith Krueger; Kay Niemeier; Cary Featherstone, St. Louis Office; Industrial Interveners; Diane Vuylsteke; Lisa Langeneckert/Bob Johnson

Formal/Informal Rate Cases to also look at the need and timing for technical, settlement, and other conferences. A settlement conference requirement for each case should be evaluated. The type of conference required (e.g., telephone) should also be evaluated.

Surveillance/Generic Policy Cases (to include rulemaking) - Mike Pendergast; AmerenUE; Tim Rush; Gary Clemens; Janis Fisher; Office of Public Counsel; CenturyTel; SBC; Warren Wood; Bob Amdor; Lisa Kremer; St. Louis Office; Industrial Interveners; Diane Vuylsteke; Lisa Langeneckert/Bob Johnson

Hearing Process – Jim Fischer; Kathy Pape; Ruth O'Neill; Lisa Langeneckert; Stu Conrad; Tom Byrne; Tom Johnson; Rick Zucker; Dale Roberts, GCO; Industrial Interveners; Diane Vuylsteke

What happens when the Commissioners begin to get involved? Hearings. Needs to be an assessment of what happens when a case goes to hearing.

Are there increased roles that our judges can play? Are there things that they can order as far as narrowing down issues? May prepare well in advance of a hearing that may not take place. What can we do to make hearings more efficient? This group is responsible for making sure objections to file testimony be made before the hearing.

Non-Rate Case (Generic) – Trip England; Jim Fischer; Kathy Pape; Laclede; SBC; Aquila; Lewis Mills; Dan Joyce (GCO); CenturyTel; Office of Public Counsel; Dale Johansen; Bob Schallenberg; Lisa Langeneckert; Diane Vuylsteke and other Industrial Intervenors

Commission needs to be informed of when and where these meetings will be held.

Timeframes – Bob Schallenberg will look to see when the Ballroom is available to meet again. Tentatively plan for May 24 or May 26. Work groups should have 45 days or more to prepare for the next meeting. Notice will be sent out to all who accepted an invitation to this roundtable.

Need a written formal product from each work group. To the extent possible, each group should identify the following key steps: timeframe associated with each step; steps sequential or parallel; purpose of the step and how it affects the hearing process; minimum filing requirements/data request issue.

Staff has been working to Modernize the Exhibit Manipulation System (EMS) – Are developing a new program to integrate billing units. The pilot has been used in a Telecommunications case. Individuals interested in the development of new cost of service program should contact the Staff.

These meeting minutes will be posted to the Internet.